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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,131

10/22/2003

Leandro Rizzuto JR.

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/691,131

Applicant(s)

RIZZUTO, LEANDRO

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-12 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-12 and 14-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-7, 10, 11, 14-17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (US 5,223,694) in view of Henneberger et al. (US 4,658,520).

Tsuji et al. disclose a hair styling tool comprising a handle portion (30, 40) with a pair of pivotally connected arms. Each arm has a hair contacting element (first pipe 10 and second pipe 20). A heater (70, 80) is located within each of the pivotally connected arms. One of the hair contacting elements (first pipe 10) has one or more apertures (vents 12 on bottom surface). The apertures (vents 12 on bottom surface) are in communication with and aligned with one or more vents (12 vents on top surface) of the hair styling tool and are capable of venting moisture, heat and/or pressure, as discussed in column 5, lines 32-41. The vents (vents 12 on top surface) are in the distal end of the arms. The arms are pivotally connected at a proximal end of the hair styling tool. The hair contacting elements (first pipe 10 and second pipe 20) are operatively located at a

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distal end of the hair styling tool. The hair contacting elements (first pipe 10 and second pipe 20) are heat conductive plates that are heated by the heaters (70, 80), as shown in Figure 2. The hair contacting elements (first pipe 10 and second pipe 20) has a hair contacting surface that is substantially planar. Regarding claims 16, 17, and 20, whether the apertures are randomly placed or placed in a predetermined manner does not further limit the structure of the hair styling tool.

Tsuji et al. do not disclose that the apertures are in the form of perforated grooves. However, Henneberger teaches how placing apertures (steam escape holes 6) in grooves (11) on the ironing surface of a steam iron distributes the steam across the work surface in column 1, line 57 to column 2, line 4. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the apertures of Tsuji et al. in grooves, as taught by Henneberger, in order to distribute the steam across the work surface (hair). Placing Tsuji et al.'s apertures in grooves would result in recessed apertures or the apertures on an additional surface.

3. Claims 8, 12, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al. (US 5,223,694) in view of Lo (US 6,223,753).

Tsuji et al. discloses the features discussed above, but does not disclose that hair contacting surfaces are corrugated. However, Lo discloses a hair styling tool with corrugated hair contacting surfaces (241) used to crimp hair rather than straighten it. It would have been obvious to one having ordinary skill in the art at the time the invention

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was made to make the hair contacting surfaces of Tsuji et al. corrugated, as taught by Lo, in order to crimp hair rather than straighten it.

Tsuji et al. does not disclose that the hair contacting element has a groove for connection to a tongue of the hair styling tool. However, Lo discloses that its hair styling tool has a groove (231) for connection to a tongue (projection 242) of its hair contacting element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a groove on the hair contacting element and a tongue of the hair styling tool of Tsuji et al., as taught by Lo, in order to provide a quick and easy way to interchange differently shaped hair contacting elements for different hair styles. Although the tongue and groove of Lo are reversed in orientation with the way they are oriented in claim 12, it would still be obvious to interchange the positions of the tongue and groove when applying the teaching of the tongue and groove to Tsuji et al., since mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Gazda*, 104 USPQ 400 (CCPA 1955).

Response to Arguments

In response to applicant's argument that Henneberger is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this

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case, Henneberger teaches to employ the steam grooves 11 on the ironing surface of a steam iron for distributing the steam across the work surface in column 1, line 57 to column 2, line 4, which solves the same problem of the invention.

Conclusion

This is a RCE of applicant's earlier Application No. 10/691,131. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
Art Unit 3732